

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NICHOLAS CICHETI,

Plaintiff,

V.

**DEFENDANT'S RULE 56
STATEMENT**
07 CIV 10546

ERNEST D. DAVIS, individually and in his
capacity as Mayor of the City of Mount Vernon,
New York,

Defendant.

**DEFENDANTS' STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE DISPUTE**

Pursuant to Federal Rule of Civil Procedure 56, and Local Civil Rules 56.1, defendant, ERNEST D. DAVIS, individually and in his capacity as Mayor of the CITY OF MOUNT VERNON, respectfully submits the following statement of material facts as to which there is no genuine issue:

1. The Fire Commissioner serves at the pleasure of the Mayor. Mount Vernon City Charter §14.
2. Mayor Clinton Young has not appointed plaintiff Fire Commissioner.
3. Plaintiff was Fire Commissioner for the City of Mount Vernon appointed by Mayor Ernest Davis on January 1, 2001.
4. Plaintiff has never partaken in any firefighting.
5. Plaintiff has never received any training as a firefighter.

6. He was terminated by Mayor Davis on November 19, 2007.

7. Several positions were cut from the budget in November-December 2007.

8. He was appointed Assistant Water Superintendent by Water Commissioner David Ford on January 1, 2008 earning in excess of \$80,000 annually.

9. Plaintiff went to a political fundraiser for Davis' Opponent with Selim Zherka thereby politically affiliating with Mr. Zherka and Mayor Davis' opponent. Plaintiff's complaint, paragraphs 5-10 of "The Facts".

11. The *Westchester Guardian* characterized Mayor Davis as "DUMB" on a front page headline and stated that Mayor Davis would be arrested and prosecuted. Plaintiff's complaint, paragraph 7 of "The Facts".

12. The Fire Commissioner is the ultimate decision maker in his agency. Mount Vernon City Charter § 127.

13. The Fire Commissioner is a policymaker. Mount Vernon City Charter §127.

14. The Fire Commissioner's position is a politically appointed position. Mount Vernon City Charter §14.

15. The Fire Commissioner attends ribbon-cuttings, grand openings and political functions at the request of and on behalf of the Mayor.

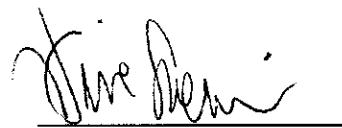
16. The Fire Commissioner's position demands political loyalty.

17. The Fire Commissioner is a department head.

18. The Fire Commissioner is the head of a department of approximately 143 firefighters.

19. The Fire Commissioner has broad policymaking responsibilities. Mount Vernon City Charter §127.
20. The Fire Commissioner is an advisor and implementer of policy and procedure. Mount Vernon City Charter §127.
21. The Fire Commissioner creates the rules, regulations and policies of the Fire Department. Mount Vernon City Charter §127.
22. The Fire Commissioner is exempt from Civil Service.
23. The Fire Commissioner is a spokesperson for the City.
24. The Fire Commissioner interacts with other fire officials from other municipalities.
25. The Fire Commissioner represents the City in meetings with other municipalities and governmental officials.
26. The Fire Commissioner possesses general control and direction of the Fire Department's budget. Mount Vernon City Charter §127.

Dated: Mount Vernon, New York
January 18, 2008


HINA SHERWANI